Supreme Court of the United States

OCTOBER TERM, 1940.

No. 587.

SAMUEL R. TOUCEY, PETITIONER,

VS.

NEW YORK LIFE INSURANCE COMPANY,
A CORPORATION, RESPONDENT.

RESPONDENT'S BRIEF.

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RESPONDENT'S BRIEF.

Petitioner has filed no brief on the merits. Respondent will therefore present the entire case.

OPINIONS BELOW.

This Court, on January 6, 1941, granted a writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit to review the ruling of that Court (R. 79) in *Toucey* v. *New York Life Insurance Company*, 112 F. 2d 927, affirming the final decree in equity of the District Court for the Western District of Missouri ordering the issuance of a permanent injunction against further proceedings in a law action pending in the Circuit Court of Jackson County, Missouri, at Kansas City (R. 64-66). Toucey had previously appealed from the District Court's order granting a preliminary injunction and the Circuit

Court of Appeals had affirmed its issuance. *Toucey v. New York Life Insurance Company*, 102 F. 2d 16. Certiorari was applied for by Toucey's then counsel from the ruling of the Eighth Circuit on the first appeal upon the identical grounds on which the present application was made. This Court denied certiorari on March 29, 1939 (307 U. S. 638).

The gist of the Circuit Court of Appeals' second opinion (R. 79) is that Toucey's appeal from the final decree presented no new facts or issues differing from those presented upon the first appeal and, therefore, the final decree of the District Court was affirmed for the same reasons for which the issuance of the preliminary injunction had been affirmed.

STATEMENT OF THE CASE.

The controversy before this Court arose upon a supplemental bill in equity filed by respondent in the District Court to enforce a final decree in equity of the District Court rendered November 22, 1936 (R. 13, 43).

Original Case.

The original proceeding was a suit in equity brought by Toucey against respondent in the Circuit Court of Jackson County, Missouri, on October 26, 1935 (R. 26), in which he prayed the reinstatement of a policy of life insurance which the Company claimed had lapsed on October 2, 1934, for failure to pay the premiums. Toucey alleged (R. 14, 27 *et seq.*) that New York Life Insurance Company policy No. 8 611 895, issued to him in the face amount of $50,000, provided for the payment of disability benefits of $500 per month in the event of total and permanent disability, and for the waiver of all premiums falling due during such disability; that Toucey became totally and permanently disabled in April, 1933, and has ever since been so disabled; that Toucey did not know that his policy provided for total and permanent disability

benefits; that Toucey went to respondent and asked it to advise him what his policy did provide, and that respondent fraudulently concealed from Toucey the fact that his policy called for disability benefits, although it knew that he was then totally and permanently disabled (R. 31).

The bill further alleged that, pursuant to respondent's advice, Toucey surrendered certain of his other policies for cash, and surrendered policy No. 8 611 895 to respondent to be changed in amount by reducing all of the benefits thereunder by one-half (R. 29). He also alleged that he did not pay the quarterly premium due on the policy October 2, 1934 (R. 27, 30, 31), and that thereupon the policy was "unlawfully" cancelled by respondent. Thereafter, and in September, 1935, Toucey discovered for the first time that his policy provided for disability benefits for disability due to disease, and he thereupon applied for the reinstatement of the policy and for disability benefits (R. 30, 31), which respondent refused to grant because due proof of disability had not been submitted to it within six months after the lapse of the policy as required by the terms thereof (R. 30). The bill stated that, because of the foregoing facts, Toucey was entitled to have the attempted reduction of the amount of benefits under his policy set aside and to have the "attempted cancellation" of his policy adjudged of no force and effect and that he be further entitled *to have the premiums under the policy waived* from August 11, 1934 (the date on which he claimed to have written the Company a letter notifying it of his disability), and the policy reinstated for its full amount (R. 32). He also asked for $500 a month disability benefits from August 11, 1934, to the time of trial in November, 1936.

This suit was removed to the United States District Court for the Western District of Missouri on the ground of diversity of citizenship and an amount in controversy over $3,000 (R. 12).

Respondent's answer to this bill filed in the Federal court (R. 16, 33 *et seq.*) put in issue all of the claims

of the petition and expressly denied that Toucey was or had been totally and permanently disabled since April, 1933, or for more than three consecutive months from August 11, 1934, expressly denied that respondent had received any notice of any kind of such disability, and expressly denied that it unlawfully cancelled the policy; alleged the reduction of the face of the policy from $50,000 to $25,000 and the reduction of the disability benefits from $500 to $250 per month and alleged that the policy lapsed October 2, 1934, for failure to pay the quarterly premium then due; that Toucey paid no further premiums, took no steps to reinstate the policy, and that the policy has ever since been void; that Toucey was not entitled to a waiver of the premiums nor to reinstatement of the policy nor to any other disability benefits thereunder.

Toucey's reply (R. 41) was a mere repetition of part of his bill.

The case was tried on these pleadings and resulted in the decree of November 22, 1936 (R. 43), in which the District Court found that Toucey was not entitled to the relief prayed for and dismissed the bill with prejudice at his costs. The Court made findings of fact and conclusions of law and rendered an opinion (R. 44) at the time it dismissed the bill. No appeal was taken from this decree.

The court, in its opinion (R. 44), expressly found: *first*, that if respondent had intentionally misled Toucey into believing that his policy did not provide for total and permanent disability benefits, then Toucey would have been entitled to reinstatement of the $50,000 policy, provided Toucey was not in law conclusively presumed to know that the policy contained such a provision. The court found, however, that as a matter of law, Toucey was conclusively presumed to know that his policy contained this provision; *second*, that respondent did not mislead Toucey or conceal the disability provision from him but, on the contrary, told him the policy contained such a provision; *third*, that respondent did not by any

fraud induce Toucey to reduce his policy from $50,000 to $25,000; *fourth*, that under the evidence submitted to the court, Toucey was not and had not been totally disabled within the meaning of the policy.

SUBSEQUENT PROCEEDINGS.

Thereafter, on December 28, 1937, one James Shay commenced an action at law in the Circuit Court of Jackson County, Missouri, against respondent (R. 22), the petition in which (R. 53) alleged that he was a citizen and resident of the District of Columbia; that he was the assignee from Toucey of policy, No. 8 611 895 and Toucey's rights under it; that Toucey had performed all the terms of the policy on his part; and that Toucey had been totally disabled since April 1, 1933. He asked for judgment for disability benefits at the rate of $500 per month, or the total sum of $28,000, plus a "reasonable attorneys' fee" of $10,000 and a penalty of $2,800, for respondent's alleged vexatious refusal to pay his claim.

Thereafter, on March 10, 1938, pursuant to leave of the District Court duly granted (R. 13), respondent filed in the District Court for the Western District of Missouri, in Toucey's original equity suit, its verified supplemental bill in equity (R. 13), setting forth in detail all that had previously transpired in the case, including the decree rendered by the District Court on November 22, 1936, the Court's findings of fact and conclusions of law embodied in the decree and the filing of the action at law by Shay in the State court (R. 21-3, 43-4). It further alleged that the parties at the original trial in the District Court had offered testimony on the issue of Toucey's total and permanent disability, and that the Court considered that evidence, and found against Toucey (R. 21-2). It further alleged, in effect, that the assignment from Toucey to Shay, subsequent to the District Court's final decree, was a mere sham and pretext to avoid Federal jurisdiction; that Toucey was the real party

concerned; that the assignment was the result of a collusive and fraudulent plan between Toucey and Shay to nullify the District Court's final decree and to secure a new adjudication by the Missouri courts upon a matter which had already been fully adjudicated by the Federal court, and to inflict unjust and inequitable penalties upon respondent for a pretended vexatious refusal to pay the disability benefits alleged to be due (R. 23-4).

The supplemental bill prayed (R. 24-5) that Toucey and his attorneys be enjoined from bringing or prosecuting any suit in his own name or in the name of any other person for the purpose of securing a readjudication of the issues adjudged by the aforesaid decree and particularly, that he be enjoined from further prosecuting the above mentioned suit in the name of Shay pending in the State court. The Court will note that the attorneys who brought the suit in the name of Shay were not the same as those who brought the original equity suit for Toucey. The attorneys who brought the Shay suit represented Toucey in the proceedings in the federal court following the filing of respondent's supplemental bill.

A preliminary injunction, not shown in the Record, issued pursuant to the verified supplemental bill. See 102 F. 2d 16 and pp. 63 and 83 of petitioner's "Petition for Writ of Certiorari." Its issuance was affirmed by the Eighth Circuit on appeal by Toucey, in a full and thorough opinion by Judge Woodrough (102 F. 2d 16).

On that appeal, Toucey's counsel argued, *first*, that the question whether Toucey was totally and permanently disabled was not an equitable but a "legal issue" and that when the District Court found that Toucey was not entitled to equitable relief, it lost jurisdiction to determine this dependent "legal" issue; and, *second*, that the District Court was prohibited by Section 265, Judicial Code (Sec. 379, Title 28, U. S. C.), to stay the law action in the State court. On the first issue, the Eighth Circuit held that, inasmuch as Toucey's claim that the policy should be treated as still in force depended upon his being

totally and permanently disabled (since in that event the premiums he had failed to pay would have been waived by the terms of the policy), the fact of Toucey's total and permanent disability was an integral and essential part of his claim to *equitable relief* and that the District Court had jurisdiction to and did decide that issue adversely to Toucey. On the second issue, the Eighth Circuit held that this case was a proper one for the use of a supplemental bill to protect and enforce the original decree of the District Court and that it therefore came within one of the well recognized exceptions to Section 265 (see 102 F. 2d 22-23), citing many decisions of this and the lower federal courts.

Thereupon Toucey's counsel applied to this Court for certiorari (Cause No. 897) upon two grounds: *first*, "Do the provisions of Sec. 379, Tit. 28, U. S. C. A., Section 265, Judicial Code, prohibit a federal court from staying proceedings in an action *in personam* pending in a State court?" *second*, "Does a court of equity, upon determining the equitable issues adversely to the petitioner, lose jurisdiction to adjudicate legal issues?" This Court, on March 29, 1939, denied the application (307 U. S. 638). It may be said in passing that the second issue raised in Toucey's application really evades the question. It is not whether the District Court lost jurisdiction to adjudicate legal issues, but whether the issue of total and permanent disability adjudicated by that Court was, under the circumstances, a legal or an equitable issue. If the latter, the Court clearly had the power to decide it.

When the case came back to the District Court, Toucey filed an answer to the supplemental bill (R. 55) in which he denied that his assignment to Shay was colorable and a pretext to evade federal jurisdiction and made to defeat the adjudication of the federal court or was the result of a collusive plan between him and Shay and alleged that the final decree of November 22, 1936, was not "*res judicata* upon the legal issue of disability involved

in said suit now pending before the Circuit Court of Jackson County, Missouri."

On final hearing to make the injunction permanent, the only evidence offered was the "Stipulation Respecting Testimony of James Shay" (R. 60) introduced by respondent, the substance of which is as follows: Shay expressly stated that he was a resident of Washington, D. C., where he was engaged in "public relations" work; that he had been acquainted with M. W. Borders, Jr. (one of Toucey's attorneys), for six or seven years; that he had never met and was not acquainted with Samuel R. Toucey; that on December 10, 1937, he was requested by Borders to accept an assignment from Toucey on the policy in issue; that he had no information as to the character of the claim except such general facts as were imparted to him by Borders; that he accepted the assignment and employed Borders and Cornelius Roach to prosecute his claim; that in the event of a recovery, he would account for the proceeds to Mr. Toucey after deducting costs, expenses, and the fees of the attorneys; that he gave Toucey no cash or other thing of value for the assignment except such as the assignment shows.

Paragraph 12 of the stipulation is as follows (R. 61):

> I accepted the assignment of the cause of action as an accommodation to Mr. M. W. Borders, Jr., it being my understanding that the legal title to the cause of action being in my name and the suit being prosecuted in my name, and my being a resident of the District of Columbia, there would be no diversity of citizenship as between me and the New York Life Insurance Company within the meaning of the statutes relating to the removal of causes of action.

Shay stated that he made no agreement to pay the costs of the action (R. 61); that he did not advance the costs in the State court and did not supply the facts set forth in the petition in the State court suit; that he had no express agreement that he was to receive any fee; that he was obligated to turn over the proceeds of any re-

covery to Major Toucey after deducting the costs, expenses and fees of the attorneys. The actual assignment agreement (R. 62) provides that Shay, after deducting costs and expenses, will "hold the proceeds or amounts in trust for the use and benefit of the said Samuel R. Toucey."

Thereupon, the District Court issued its "Final Decree and Order for Permanent Injunction" (R. 64), pursuant to which a writ of injunction issued (R. 65) and was served on Toucey and his attorneys (R. 66).

Thereupon, Toucey's attorneys took a second appeal, in which the questions urged were identical with those presented on the first appeal (R. 69). The Eighth Circuit, by Judge Sanborn, ruled (*Toucey* v. *New York Life Insurance Company*, 112 F. 2d 927) that the record on the second appeal presented no new or different issues from those raised on the first appeal, saying (l. c. 928): "The final decree has the same basis in fact and law as the interlocutory decree which was considered on the former appeal" and that appellant's argument and brief "present the same grounds for reversal that were urged on the former appeal." The Court held, *first*, that the decision on the first appeal was binding in the absence of any change in the facts or issues; and *second*, that the Court was convinced its former decision was right, for the reasons therein stated.

From this decision Toucey, *pro se*, applied to this Court for certiorari in a petition of 87 printed pages, pursuant to which this Court granted certiorari on January 6, 1941 (61 S. Ct. 440). The grounds of his application are *identical* with those stated in the petition for certiorari following the first adverse decision by the Eighth Circuit in 102 F. 2d 16.

SUMMARY OF THE ARGUMENT.

I.

The original decree of the District Court on November 22, 1936, dismissing petitioner's bill in equity upon the merits was a proper adjudication that petitioner was not totally and permanently disabled and was *res judicata* of that issue. Hence, to enforce and protect the decree, it was appropriate for the District Court to enjoin any subsequent attempt to relitigate the same issue. Many prior decisions of this Court have established this equitable principle. To repudiate this principle or withhold its application in this case would result in unjust hardship to respondent.

II.

Section 265, Judicial Code (Section 379, Title 28, U. S. C., R. S., Sec. 720), does not, under the circumstances of the present case, prevent a federal court from staying proceedings in an action *in personam* pending in a state court. This case presents one of the uniformly recognized exceptions to the application of the statute, being an ancillary proceeding to effectuate and protect a final decree of a federal equity court in a controversy of which it had exclusive jurisdiction when the decree was rendered and to prevent relitigation of issues finally adjudged by that decree. The purpose of the statute is, not to render a federal court powerless to carry out its decrees, but merely to prevent an unseemly conflict between the federal and state jurisdictions in cases where the prior exclusive jurisdiction of the federal court has not been clearly established in accordance with recognized principles of law and equity. The doctrine of *Kline* v. *Burke Construction Co.*, 260 U. S. 226, does not apply to this case.

III.

Section 265, Judicial Code, should not be construed to prohibit the relief granted in this case. To so construe it would raise grave doubts respecting the constitutionality of the statute in view of the express provision of Section 2 of Article III of the Constitution of the United States, that "the judicial power shall extend to all cases, in law and equity, arising under this Constitution and the laws of the United States: * * *." The power of a federal equity court to enforce and protect its own decrees is inherent in its nature as a court and is derived from Section 2 of Article III of the Constitution. The constitutionality of any attempt by Congress to restrict or abolish that power is open to serious doubts. A construction of Section 265 raising such doubts must be avoided.

ARGUMENT.

Respondent is handicapped by the absence of a brief on the merits on behalf of petitioner. The ground on which this court granted his petition is rendered somewhat uncertain by the circumstance that his application for certiorari after the first appeal was denied, and that the petition now before this court, contains a great number of charges in the language of a layman the importance of which, in the view of this court, respondent is not in a position to judge. Since, however, the petition does contain two clearly expressed grounds, copied from the first petition which this court denied, respondent is perforce proceeding upon the assumption that the petition was granted upon the suggestion of a doubt of the correctness of this court's previous ruling. We shall, therefore, in this brief confine ourselves to the points relied upon by petitioner, copied from his first petition.

Respondent has assumed that this court is not concerned with various charges of wrongdoing against respondent's employees contained in the petition, none of which finds any basis whatever in the record (nor in fact) nor was or ever has been assigned as error in the District Court or the Circuit Court of Appeals.

Respondent has also assumed that this court is not interested in the effect of the decree insofar as it stops *Shay* from prosecuting the state court action through an injunction against *Toucey*. Shay's stipulation, mentioned in the Statement of the Case (R. 60), thoroughly identifies Shay with Toucey and shows that the assignment from Toucey to Shay was a mere device by means of which Toucey hoped to relitigate his controversy in the state court. The statute defining the scope of federal injunctions is obviously broad enough to include this situation (Sec. 383, Title 28, U. S. C.). Pe-

titioner and his counsel have never claimed otherwise and assigned no error on this score in the Circuit Court of Appeals or this Court.

Respondent has also assumed that this Court is not concerned with the ruling of the Eighth Circuit that its decision on the first appeal (102 F. 2d 16) constituted the "law of the case," in the absence of new facts, new authorities or different issues. Obviously, that ruling was right. A decision on an appeal from a preliminary injunction constitutes the "law of the case" equally with any decision on any other appeal. *Thompson* v. *Marshall, etc., Co.*, 168 U. S. 451; *Radio Corp.* v. *De Forest Radio Co.*, 3 Cir., 47 F. 2d 606; *Walbridge-Aldinger Co.* v. *Rudd*, 8 Cir., 26 F. 2d 636; *Brown* v. *Lanyon Zinc Co.*, 8 Cir., 179 F. 309; *International Brotherhood* v. *Western Union Telegraph Co.*, 7 Cir., 46 F. 2d 736. Moreover, the Eighth Circuit reconsidered the merits of the first appeal and concluded (l. c. 928) (R. 80), "We are convinced that the former decision of this court in this case was right, for the reasons therein stated." In any event, this ruling is not presented by Toucey as a ground for review by this Court.

I.

The Original Decree of the District Court on November 22, 1936, Dismissing Petitioner's Bill in Equity upon the Merits Constituted an Adjudication That Petitioner Was Not Totally and Permanently Disabled and Was Res Judicata of That Issue. Hence, to Enforce and Protect the Decree It Was Appropriate to Enjoin Any Subsequent Attempt to Relitigate the Same Issue.

The identity of issues in Toucey's original equity suit and the Shay action is so apparent that we feel sure that this point was not uppermost in this Court's mind in granting certiorari. Consequently, we shall consider it very briefly. If this Court will examine Toucey's bill in the original case (R. 1) and respondent's answer

thereto (R. 33), it will be apparent that Toucey never claimed that he had paid any premium on the policy of insurance in controversy subsequent to August 2, 1934. To claim that he was entitled to have the policy reinstated and declared in force as of October 2, 1934, and subsequently, he depended and necessarily had to depend *solely* upon the fact that he was totally and permanently disabled. If so, and if due proof of his disability were submitted to respondent, the premiums thereafter falling due were waived. Hence, even if Toucey had succeeded in proving the fraud alleged in his bill, it would have been necessary for him to prove *also*, as an essential part of his equitable claim to reinstatement, that he was totally disabled prior to October 2, 1934. Thus, the issue of Toucey's total and permanent disability was an equitable issue and an essential fact to establish his claim for equitable relief. The District Court found against him on this fact. It entered a final decree dismissing his case on the merits (R. 43) and accompanied this decree with an opinion (R. 44), in which were embodied its findings of fact and conclusions of law. Finding of Fact No. 2 (R. 49) was:

> I believe that it has not been proved that the plaintiff, within the meaning of this contract, is now, or has been at the times alleged in the petition, wholly disabled by bodily injury or disease, so that he is prevented thereby from engaging in any occupation whatever for remuneration or profit and I think the fact to be that he is not and has not been so disabled. That is finding of fact, I think, No. 2.

To prove his right to a premium waiver and reinstatement, Toucey had to prove fraud *and* his total and permanent disability. The District Court first found that respondent had committed no fraud (R. 47). The Court could have stopped there but it did not. It also found that Toucey was not totally disabled. Thus, it expressly found against Toucey on both essential facts of his claim for equitable relief, even though the finding against him on either would have been enough to deny the relief

claimed. Where there are two grounds, upon either of which a court may rest its decision, and it adopts both, each is the judgment of the court and of equal validity with the other. *United States* v. *Title Insurance & Trust Co.*, 265 U. S. 472; *Union Pacific R. R. Co.* v. *Mason City, etc., R. R. Co.*, 199 U. S. 160; *Railroad Companies* v. *Schutte*, 103 U. S. 118; *Irving Nat'l Bank* v. *Law*, 2 Cir., 10 F. 2d 721.

The reasoning of the Eighth Circuit on this point is unanswerable. Judge Woodrough said, in 102 F. 2d, at page 20:

> His petition to the equity court was to reinstate the whole original policy with all of its life insurance and other benefits. The grounds without which he could not have stated a case for reformation and reinstatement of his policy were the alleged total and permanent disability occurring in April, 1933, exempting him from premium payments after that date, and the alleged fraud of the insurance company.
>
> Insofar as Mr. Toucey's prayer for recovery for his disability payments may be regarded as a dependent legal claim, it was a claim dependent upon Mr. Toucey's establishing his right to reinstatement of his entire policy. That right, in turn, was dependent upon proving the disability occasioning premium waiver and also upon the alleged fraud of the insurance company in respect to said disability. Unless and until the equity court had before it evidence to justify it in finding both the disability and the fraud relating thereto, it could not award judgment on the disability provisions of the policy. But both of those claims were asserted and in controversy before it and the court of equity was called upon to decide upon both controversies. It did consider the evidence on both issues and we are cited to no case implying that a court of equity lacks power to fully and finally adjudicate all equitable controversies presented by the

pleadings and the evidence in a case within its jurisdiction. Its adjudication on each claim in controversy was equally conclusive and binding upon Mr. Toucey.

Even if the District Court had not expressly found that Toucey was not totally and permanently disabled, that issue was conclusively adjudicated adversely to him by the decree dismissing his bill. That decree of dismissal on the merits rendered all the issues in the case *res judicata*. *Hickey* v. *Johnson*, 8 Cir., 9 F. 2d 498, l. c. 501; *Manhattan Trust Co.* v. *Trust Co. of North America*, 8 Cir., 107 Fed. 328; *Brooks* v. *Arkansas-Louisiana Pipe Line Co.*, 8 Cir., 77 F. 2d 965. That decree is conclusive of every issue necessary to sustain it, whether that issue is mentioned or not (*Fayerweather* v. *Ritch*, 195 U. S. 276; *St. Joseph Union Depot Co.* v. *Chicago, R. I. & P. Ry. Co.*, 8 Cir., 89 Fed. 648, l. c. 659; *Board of Commissioners* v. *Cockrell*, 5 Cir., 91 F. 2d 412, l. c. 416; *Pick Mfg. Co.* v. *General Motors Corp.*, 7 Cir., 80 F. 2d 639).

Petitioner and his counsel have never contended that Shay's state court action was not an attempt to relitigate the question of Toucey's total and permanent disability. It obviously is, because Shay could not collect the disability benefits for which he asks unless Toucey were proven to be totally and permanently disabled. Petitioner and his counsel have merely contended that the District Court had no power to decide the question of Toucey's total and permanent disability because that was a "legal" issue, which the court lost jurisdiction to determine after having found against Toucey on his claim of fraud. We have demonstrated that this issue was an equitable one.

We shall now show that it was within the power of the District Court as an equity court to prevent Toucey through Shay from relitigating that issue in the state court and shall show under Point II that Section 265 of the Judicial Code does not prohibit the District Court from doing so.

The Action of the District Court in Enjoining the Prosecution of the State Court Action, Pursuant to Respondent's Supplemental Bill, Was Proper and in Accordance with the Well-recognized Power of Federal Courts of Equity to Effectuate and Perfect Their Own Final Decrees.

A. The Remedy by Supplemental Bill Is of Ancient Origin.

The use of the writ of injunction to prevent a party from pursuing a remedy at law is centuries old. According to Mr. Story, it can be traced to the beginning of the reign of Henry VII (Story's Eq. Jur., Chap. 23, Sec. 874). An interesting treatise on the use of injunctions to stay proceedings at law is Mr. Eden's "Treatise on the Law of Injunctions" (2d American, from the last London Ed., N. Y., 1839). He states that the granting of injunctions without a bill previously filed was one of the articles of impeachment against Cardinal Wolsey (Ch. 3, p. 70). Injunctions were issued (always against the parties) to stay a trial or, after verdict, to stay judgment or, after judgment, to stay execution or, if the execution had been effected, to stay the money in the hands of the sheriff (Story, Sec. 874, *supra*). Injunctions were issued in the case of mutual mistake, fraud, where discovery was called for, to relieve a party against penalties, to prevent forfeitures for nonpayment of rent or for breach of covenant, to secure specific performance, in aid of an accounting, and in numerous other cases.

One of the earliest, commonest and most uniformly recognized grounds for injunction is to execute or enforce a prior decree of a court of equity, upon application by supplemental bill. In *Kershaw* v. *Thompson*, 4 Johns. Ch. 609 (1820), Chancellor Kent held that after a decree of foreclosure of a mortgage, the Court, in aid of its decree, would, upon the application of the purchaser of the

property, order the mortgagor or his successor in interest to surrender possession of the land. He said, l. c. 612:

> The distribution of power between the Courts would be injudicious, and the administration of justice exceedingly defective, and chargeable with much useless delay and expense, if it were necessary to resort, in the first instance, to a Court of equity, and, afterward, to a Court of law, to obtain a perfect foreclosure of a mortgage. It seems to be absurd to require the assistance of two distinct and separate jurisdictions for one and the same remedy, viz.: the foreclosure and possession of the forfeited pledge. But this does not, upon due examination, appear to be the case; and it may be safely laid down as a general rule that the power to apply the remedy is coextensive with the jurisdiction over the subject matter.

The learned Chancellor relied upon the earlier case of *Dove* v. *Dove* (Dickens 617, 1 Bro. 375, 1 Cox 101, S. C.), which he states was before Lord Loughborough and also before the Lords Commissioners in 1783 and 1784. There, the Court decreed the sale of the estate of a testator but did not decree that the defendant deliver up possession. The tenant in possession, who held under some supposed right of jointure and dower, refused to deliver. The purchaser applied to the Court for a writ of assistance, which was issued, to put the purchaser in possession. It was shown that there was a well established practice at that time to procure a decree on the defendant to deliver possession, make a demand, and an attachment would then issue for disobeying the order, followed by an injunction against the tenant to deliver possession and, upon a refusal, a writ of assistance to the sheriff to put the party in possession issued on motion without notice. Chancellor Kent points out that the same rule is stated in West's Symbol, Part 2, 189, to have been the practice in the reign of Queen Elizabeth and that the same procedure under a decree for possession of land is prescribed by Lord Bacon in his Rule No. 9.

Mr. Story says, Section 1291:

> Sec. 1291. *Injunctions as Aid to Enforcement of Judgment for Recovery of Land.*—Courts of equity also interfere and effectuate their own decrees in many cases by injunctions in the nature of a judicial writ or execution for possession of the property in controversy; as, for example, by injunctions to yield up, deliver, quiet, or continue the possession, followed up by a writ of assistance. Injunctions of this sort are older than the time of Lord Bacon, since in his Ordinances they are treated as a well known process. Indeed, they have been distinctly traced back to the reign of Elizabeth and Edward VI, and even of Henry VIII. In some respects they bear an analogy to sequestrations; but the latter process, at least since the reign of James I, has been applied not merely to the lands in controversy in the cause but also to other lands of the party.

relying on *Kershaw* v. *Thompson*, *supra*, and *Dove* v. *Dove*, *supra*, for his authority; also, on Eden on Injunctions, *supra*. He also quotes from Chancellor Kent (4 Kent Comm. Lect. 58, pp. 191-192, 3d Ed.) as follows:

> Upon a decree for a sale (of mortgaged property) it is usual to insert a direction that the mortgagor deliver up possession to the purchaser. But whether it be or be not a part of the decree, a Court of equity has competent power to require by injunction and enforce by process of execution delivery of possession; and the power is founded upon the simple elementary principle that the power of the Court to apply the remedy is co-extensive with its jurisdiction over the subject matter.

See also *Schenck* v. *Conover*, 13 N. J. Eq. (2 Beasley) 220 (1860), in which the Court pointed out that injunctions to deliver possession of lands after decree went back to the time of Henry VIII, citing numerous early authorities.

The remedy by supplemental bill has not, however, been confined to actions involving the possession of real

estate or other property. See *Shepherd* v. *Towgood*, Tur. & Rus. 379 (Sir Thomas Plumer, Master of the Rolls) (1823), in which a supplemental bill was permitted to be filed following an original creditor's bill. See *Davis* v. *Bluck*, 6 Beav. 393 (1843), where the suit was for specific performance of a contract to assign a lease and, upon discovery that the premises involved were more extensive than as described in the contract, the Court permitted the filing of a supplemental bill to cover the additional property.

In *Buffum's Case*, 13 N. H. 14 (1842), the situation was the same as in *Kershaw* v. *Thompson*, *supra*, and *Schenck* v. *Conover*, *supra*, and the Court said, l. c. 16:

> The Court has the power to issue all process necessary to carry its decree into effectual execution. Hopkins Ch. Rep. 231; *Ludlow* v. *Lansing*, 4 Johns. Ch. 613.

Ludlow v. *Lansing*, 4 Johns. Ch. 613 (1824) (N. Y.) was similar to and followed the decision in the case of *Kershaw* v. *Thompson*, *supra*. There, Chancellor Sanford said, speaking of supplemental proceedings in equity to put a party in possession of real estate:

> This practice is not an extension of the jurisdiction of this Court; it is merely an exertion of its acknowledged powers, in a particular manner; a species of relief by way of execution. Where this Court has power to decree, it has power to carry its decrees into effectual execution; and there cannot be any good reason that the purchaser of mortgaged lands sold under a decree in equity should not be put into possession by the Court which makes the sale and transfers the title. To transfer the title and leave the purchaser to another suit to obtain possession from a party, whose rights had been fully decided by this Court, would be useless, and vexatious circuity.

B. This Court has repeatedly held that where a federal court has issued a final decree in equity and where one of the parties or one in privity with him attempts or threatens a course of action which will nullify the decree or lessen or impair its effect, the federal court will, upon the filing of a supplemental bill, enjoin the party or those in privity with him from doing so.

A leading case in this Court is *Root* v. *Woolworth*, 150 U. S. 401 (1893), in which the federal court for the District of Nebraska had decreed the title to certain real estate to be in one Morton. Subsequently, the title passed from Morton to Woolworth who, upon Root's reentry on the premises and claim of title previously declared to have been in Morton, filed an ancillary bill in the same court seeking, among other things, that Root be restrained from asserting his pretended title, and occupying the premises, and that a writ of possession be issued to remove Root from the premises. Upon the question whether or not the court had jurisdiction to entertain the bill, this Court said, l. c. 410-11:

> It is well settled that a court of equity has jurisdiction to carry into effect its own orders, decrees, and judgments, which remain unreversed, when the subject-matter and the parties are the same in both proceedings. The general rule upon the subject is thus stated in Story's Equity Pleading (9th Ed.), Sec. 338:
>
> > "A supplemental bill may also be filed, as well after as before a decree; and the bill, if after a decree, may be * * * in aid of the decree, that it may be carried fully into execution; * * * *But where a supplemental bill is brought in aid of a decree, it is merely to carry out and to give fuller effect to that decree*, and not to obtain relief of a different kind on a different principle; the latter being the province of a supplementary bill in the nature of a bill of review, which cannot be filed without the leave of the court."
>
> * * * * * *

> *The jurisdiction of courts of equity to interfere and effectuate their own decrees by injunctions or writs of assistance in order to avoid the relitigation of questions once settled between the same parties is well settled.* Story's Eq. Jur., Sec. 959; *Kershaw* v. *Thompson*, 4 Johns. Ch. 609, 612; *Schenck* v. *Conover*, 13 N. J. Eq. (2 Beasley) 220; *Buffum's case*, 13 N. H. 14; *Shepherd* v. *Towgood*, Tur. & Rus. 379; *Davis* v. *Bluck*, 6 Beav. 393 (italics ours).

The case not only establishes the principle of equitable jurisdiction that a federal equity court is empowered to protect by injunction its own decrees against subsequent relitigation, but expressly extends the scope of that protection not only against the party against whom the decree was rendered but against anyone claiming under or through such person. There the supplemental bill was brought by the assignee of the person in whom the title had been decreed to be. The court said, l. c. 411:

> Under this principle Morton could undoubtedly have brought the bill to carry into effect the decree rendered in his favor against Root, *and it is equally clear that his assignee, or privy in estate, has a right to the same relief that Morton could have asserted.* On this subject it is stated in Story's Equity Pleading, Sec. 429:
>
> > "Sometimes such a bill is exhibited by a person who was not a party, or who does not claim under any party to the original decree; but who claims in a similar interest, or who is unable to entertain the determination of his own rights, till the decree is carried into execution. *Or it may be brought by or against any person claiming as assignee of a party to the decree.*"
>
> The appellee in the present case occupies that position, and he should not, any more than Morton, to whose rights he has succeeded, be put to the necessity of instituting an original or independent suit against Root, and relitigate the same questions which were involved in the former proceeding (first italics ours).

The opinion in the Root case nowhere mentions Section 265, but completely ignores it. The decision is not upon the ground that the court had the custody of a *res* but on general principles of equity jurisdiction.

An excellent case, very much in point, is *Julian* v. *Central Trust Co.*, 193 U. S. 93 (1904). There, a foreclosure proceeding was instituted in the Federal court under a mortgage on a railroad. The Court decreed and confirmed the sale of the property. Afterward, certain creditors of the company formerly owning the railroad obtained judgments against it in the North Carolina State court and sought to levy upon and sell the property described in the decree of foreclosure and the order confirming the sale. Thereupon, the purchaser at the foreclosure sale filed a supplemental bill in equity to restrain the judgment creditors from satisfying their demands out of the property. In holding that the Circuit Court was right in enjoining the plaintiff in the State court cases from proceeding on their judgment, this Court said, l. c. 112-13:

> In such cases where the Federal court acts in aid of its own jurisdiction and to render its decree effectual, it may, notwithstanding Sec. 720, Rev. Stat., restrain all proceedings in a state court which would have the effect of defeating or impairing its jurisdiction. *Sharon* v. *Terry*, 36 Fed. Rep. 337, *per* Mr. Justice Field; *French* v. *Hay*, 22 Wall. 250; *Deitzsch* v. *Huidekoper*, 103 U. S. 494.
>
> Nor is it an answer to say that these judgments were for causes of action arising subsequent to the confirmation of sale. The Federal Court by its decree reserved the right to determine what liens or claims should be charged upon the title conveyed by the court, and by the levy and sale to pay these judgments the title is charged with other liens established in another court in a proceeding to which the purchaser was not a party. The Federal court, in protecting the purchaser under such circumstances, was acting in pursuance of the jurisdiction acquired when the foreclosure proceedings were begun.

See also *Riverdale Cotton Mills* v. *Ala. & Ga. Mfg. Co.*, 198 U. S. 188 (1905), where on comparable facts, a decree of injunction was affirmed by this Court, which said, l. c. 194-5:

> It thus appears that a party carries on a litigation in a Federal court on its merits, and when beaten in that court goes into a state court and claims that, by reason of his own untruthful admission of citizenship, the Federal court assumed a jurisdiction which in fact it could not take, and that all the proceedings in that court must go for naught. Under such circumstances there can be no doubt that the Federal court may inquire and determine whether its proceedings were a nullity, and such inquiry is not an original proceeding, but ancillary to those which have already been had. In other words, a Federal court, exercising a jurisdiction apparently belonging to it, may thereafter, by ancillary suit, inquire whether that jurisdiction in fact existed. It may protect the title which it has decreed as against every one a party to the original suit and prevent that party from relitigating the questions of right which have already been determined. *French, Trustee*, v. *Hay*, 22 Wall. 250; *Cole* v. *Cunningham*, 133 U. S. 107; *Root* v. *Woolworth*, 150 U. S. 401.

In addition to *French, Trustee*, v. *Hay*, 22 Wall. 250, and *Root* v. *Woolworth*, *supra*, the Court relied on *Julian* v. *Central Trust Co*, *supra*. The language in this case (by Mr. Justice Brewer) is quite apropos to the present controversy.

In *Gunter* v. *Atlantic Coast Line*, 200 U. S. 273 (1906), the federal District Court for South Carolina had adjudged in 1870 that plaintiff was exempt from certain taxes imposed by South Carolina law. Thirty years later, in 1900, the legislature assessed plaintiff's property for taxes for twelve years back and directed the Attorney General to test by suit in the state court plaintiff's right to exemption from these taxes. Thereupon the Coast Line filed its ancillary bill in the original case, al-

leging that the assessment and suit were in direct violation of the decree of 1870 and asking that the Attorney General be enjoined from further prosecuting the State court suit. A permanent injunction was ordered, which this Court approved, holding that the State of South Carolina and its Attorney General were bound by the 1870 decree which had established the exemption in issue in the pending State court suit. This Court said, l. c. 292:

> Indeed, the proposition that * * * section 720 of the Revised Statutes, control a court of the United States in administering relief, although the court was acting in a matter ancillary to a decree rendered in a cause over which it had jurisdiction, is not open for discussion. *Dietzsch* v. *Huidekoper*, 103 U. S. 494; *Prout* v. *Starr*, 188 U. S. 537; *Julian* v. *Central Trust Co.*, 193 U. S. 93, 112.
>
> And this reasoning disposes of the contention that the court below erred in enforcing its prior decree because there was adequate remedy at law, by interposing a defense in the state courts to the actions brought by the Attorney General. That question was foreclosed by the decree in the Pegues case. * * * Having acquired by that decree a right which the petitioner was entitled to enforce, * * * that rule could not rightly be invoked to deprove the court below as a court of equity of the power to protect the petitioner in the enjoyment of rights previously secured under a decree of the court.

In *Looney* v. *Eastern Texas R. R. Co.*, 247 U. S. 214 (1918), the Railroad Commission of Louisiana filed with the Interstate Commerce Commission a complaint charging that various railroad companies were maintaining unreasonable and discriminatory rates on traffic from Louisiana to Texas. The order of the Commission, pursuant to the proceeding, was sustained by this Court (234 U. S. 342). Subsequently, the Commission issued an order that rates between the points in question should be no greater than those between points in Texas. The Attorney General of Texas declared that the order was void and that he would institute suits in Texas for damages and penalties

under Texas law against any carrier complying, whereupon the carriers filed a bill in equity in the Federal District Court in Texas to enjoin the Attorney General from bringing the suits. The three-judge court issued the order prayed. The Attorney General nevertheless proceeded to file a suit in the Texas court. The carriers then filed a supplemental bill in the Federal court, setting out certain proceedings of the Interstate Commerce Commission which had occurred subsequent to the original bill and setting out the suit filed by the Attorney General, and asking that its prosecution be enjoined. A temporary injunction was issued, from which the Attorney General appealed to this Court, where a motion was filed to dismiss the appeal for want of jurisdiction on the ground that the injunction was not an appealable order under Section 266, Judicial Code. This Court sustained the motion to dismiss but said, l. c. 221:

> The use of the writ of injunction, by federal courts first acquiring jurisdiction over the parties or the subjectmatter of a suit, for the purpose of protecting and preserving that jurisdiction until the object of the suit is accomplished and complete justice done between the parties, is familiar and long established practice, *Freeman* v. *Howe*, 24 How. 450; *Harkrader* v. *Wadley*, 172 U. S. 148, 163, 164; in a rate case, *Missouri* v. *Chicago, Burlington & Quincy R. R. Co.*, 241 U. S. 533, 543. So important is it that unseemly conflict of authority between state and federal courts should be avoided by maintaining the jurisdiction of each free from the encroachments of the other, that Section 265 of the Judicial Code, Rev. Stats., Sec. 720, Act of March 2, 1793, Ch. 22, 1 Stat. 334, has repeatedly been held not applicable to such an injunction. *Julian* v. *Central Trust Co.*, 193 U. S. 93, 113; *Simon* v. *Southern Ry. Co.*, 236 U. S. 115.

In *Supreme Tribe of Ben Hur* v. *Cauble*, 255 U. S. 356 (1921), plaintiff, a fraternal benefit association, filed a supplemental bill to have enjoined a State court action alleged to be an effort to relitigate the question of plaintiff's use of certain trust funds and of the validity of its

own reorganization plan by which another class of certificate holders had been created, both questions having been determined adversely to defendants in a prior federal court equity suit. The issues in the original federal equity suit and in the subsequent State court case were identical. *The case is squarely in point here.* This Court held that defendants were bound by the prior decree and that an injunction should have been issued upon the ancillary bill, saying, l. c. 367:

> * * * holding, as we do, that the membership of Class A were concluded by the decree of the District Court, an ancillary bill may be prosecuted from the same court to protect the rights secured to all in the class by the decree rendered. *Looney* v. *Eastern Texas R. R. Co.*, 247 U. S. 214, and cases cited.

In *Independent Coal & Coke Co.* v. *United States*, 274 U. S. 640 (1927), the United States, in whom title to certain real estate in the State of Utah had been decreed to be, was permitted to maintain an ancillary bill to restrain a transferee of the losing party from asserting a title adverse to that adjudged by the decree. The Court said, l. c. 647:

> The suit is in the nature of a supplemental bill in aid of the former decree and is an appropriate method of securing the benefit of the first decree when subsequent events have made necessary some further relief in order that the plaintiff may enjoy the full fruits of the victory in the first suit. Cf. *Root* v. *Woolworth*, 150 U. S. 401; *Shields* v. *Thomas*, 18 How. 253, 262; *Thompson* v. *Maxwell*, 95 U. S. 391; *Story, Equity Pleading*, 10th Ed., Secs. 338, 339, 345, 351 (b), 353, 429, 432. Cooper, Equity Pleading, 74, 75.

There no action had been begun in the state court and the case, therefore, does not involve the construction of Sec. 265.

In *Local Loan Co.* v. *Hunt*, 292 U. S. 234 (1934) Hunt was adjudged a bankrupt and was discharged from

all provable debts and claims. One week later, petitioner brought an action in the municipal court of Chicago against Hunt's employer to enforce an assignment of wages made prior to the filing of his petition in bankruptcy to secure a debt of $300. Thereupon Hunt commenced this proceeding in the original bankruptcy action by a supplemental bill to enjoin petitioner from further prosecuting the action in the Chicago court or from otherwise attempting to enforce the wage assignment. The District Court entered a decree accordingly, which was affirmed on appeal. On certiorari, this Court also affirmed the decree, pointing out that the bill was supplemental and for the purpose of effectuating and protecting the original bankruptcy decree, saying, l. c. 239:

> *First.* The pleading by which respondent invoked the jurisdiction of the bankruptcy court in the present case is in substance and effect a supplemental and ancillary bill in equity, in aid of and to effectuate the adjudication and order made by the same court. *That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled. Root* v. *Woolworth,* 150 U. S. 401, 410-412; *Julian* v. *Central Trust Co.,* 193 U. S. 93, 112-114; *Riverdale Mills* v. *Manufacturing Co.,* 198 U. S. 188, 194 *et seq.; Freeman* v. *Howe,* 24 How. 450, 460. And this, irrespective of whether the court would have jurisdiction if the proceeding were an original one. The proceeding being ancillary and dependent, the jurisdiction of the court follows that of the original cause, and may be maintained without regard to the citizenship of the parties or the amount involved, and notwithstanding the provisions of Section 265 of the Judicial Code * * *. *Julian* v. *Central Trust Co., supra,* 112; *Dietzsch* v. *Huidekoper,* 103 U. S. 494, 497; *Root* v. *Woolworth, supra,* 413; *M'Donald* v. *Seligman,* 81 Fed. 753; *St. Louis, I. M. & S. Ry. Co.* v. *Bellamy,* 211 Fed. 172, 175-177; *Brun* v. *Mann,* 151 Fed. 145, 150 (Italics ours).

and further saying, l. c. 240:

> "Petitioner relies upon a number of decisions where other federal courts sitting in bankruptcy have declined to entertain suits similar in character to the present one, on the ground that the effect of a discharge in bankruptcy is a matter to be determined by any court in which the discharge may be pleaded. See, for example, *Hellman* v. *Goldstone*, 161 Fed. 913; *In re Marshall Paper Co.*, 102 Fed. 872, 874; *In re Weisberg*, 253 Fed. 833, 835; *In re Havens*, 272 Fed. 975. *To the extent that these cases conflict with the view just expressed they are clearly not in harmony with the general rule in equity announced by this court.* And we find nothing, either in the nature of the bankruptcy court or in the terms of the bankruptcy act, which necessitates the application of what would amount to a special rule on this subject in respect of bankruptcy proceedings (italics ours).

The latest expression of this Court approving and applying this principle is *Dugas* v. *American Surety Co.*, 300 U. S. 414 (1937). There The Lumbermen's Reciprocal Association, a Texas company, executed a surety bond for $20,000 to qualify to write Workmen's Compensation and other insurance in Louisiana. It failed and, the amount of the claims against it being in excess of the amount of the bond, the surety, American Surety Company, paid the amount of the bond into the Federal District Court in Louisiana under the Federal Interpleader Act and secured a decree discharging it from further liability. Shortly before the surety company did so, one Dugas sued American Surety Company as surety in a Louisiana court upon the bond and secured a judgment for three hundred weeks' compensation at $20 per week. American Surety Company appealed and, as required by state law, posted an appeal bond of $10,000 with New York Casualty Company as surety. Meanwhile, Dugas, with others, had been required to interplead in the interpleader suit. His claim was found to be $4,160.68 and the pro-rata share of the fund available from the proceeds of the $20,-

000 bond was $1,141.29. This finding was confirmed and Dugas accepted his pro-rata share. Subsequently Dugas filed a second suit in the Louisiana court against New York Casualty Company, the surety on the appeal bond, asserting that American Surety Company had not diligently prosecuted its appeal but had brought the interpleader suit in the Federal Court and secured an injunction preventing him from having a determination of the appeal, thereby abandoning the appeal. Dugas prayed judgment for $3,019.39, the difference between his compensation claim as ascertained in the interpleader suit and the pro-rata share of the money in court actually paid him. The trial court sustained an exception to this suit and dismissed it, whereupon Dugas appealed to the Louisiana Supreme Court and secured a reversal and a remand for a trial. Thereafter American Surety Company filed a supplemental bill in the original interpleader suit in the Federal Court, setting forth substantially the above facts and alleging that Dugas' second suit was an attempt indirectly to subject American Surety Company to further liability on account of said bond, contrary to the decree of the Federal Court discharging it from further liability thereon, inasmuch as that company as principal would be bound to reimburse its surety, New York Casualty Company, if that company were found liable on the $10,000 appeal bond. On the basis of this bill, the Federal District Court made a supplemental decree, specifically enjoining Dugas from further prosecuting his suit in the state court against New York Casualty Company. On appeal the Fifth Circuit affirmed the decree below. On certiorari, the Supreme Court held that in bringing suit in the state court on the appeal bond, Dugas contravened the fair intendment of the decree in the interpleader suit, and, in ruling that the decree below was proper, said, l. c. 428:

> The jurisdiction to entertain the supplemental bill is free from doubt. Such a bill may be brought

in a federal court in aid of and to effectuate its prior decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect, but subject to the qualification that the relief be not of a different kind or on a different principle. Such a bill is ancillary and dependent, and therefore the jurisdiction follows that of the original suit, regardless of the citizenship of the parties to the bill or the amount in controversy.

The power of the court to enjoin Dugas from further prosecuting his suit in the state court on the appeal bond has full support of Sections 2 and 3 of the Interpleader Act of 1926 before quoted, *as also in settled adjudications respecting the power of a federal court to protect its jurisdiction and decrees* (Italics ours).

By the foregoing decisions, this Court has established a well defined principle of equity, plain in meaning and uniform in application to all cases where subsequent attempts are made to relitigate issues adjudged by a prior federal decree. Clearly these decisions justify the relief asked for and granted here. Both opinions of the Eighth Circuit (102 F. 2d 16 and 112 F. 2d 927) are thoroughly in harmony with the declarations of this Court in the foregoing cases, and are in fact based upon them and expressly follow them.

The lower federal courts have followed and applied the foregoing decisions of this Court in a variety of cases, a few of which are:

Phoenix Finance Corp. v. *Iowa-Wisconsin Bridge Co.*, 8 Cir., 115 F. 2d 1, cert. granted Jan. 20, 1941, 61 S. Ct. 550, No. 624.

Hesselberg v. *Aetna Life Ins. Co.*, 8 Cir., 102 F. 2d 23.

Equitable Life Assurance Soc. v. *Wert*, 8 Cir., 102 F. 2d 10.

Fiske v. *Missouri*, 8 Cir., 62 F. 2d 150.

Mississippi Valley Trust Co. v. *Franz*, 8 Cir., 51 F. 2d 1047.

Sand Springs Home v. *Title Guaranty & Trust Co.*, 8 Cir., 16 F. 2d 917.

Hickey v. *Johnson*, 8 Cir., 9 F. 2d 498.

Swift v. *Black Panther Oil & Gas Co.*, 8 Cir., 244 F. 20.

King v. *Realty Mtg. Co.*, 5 Cir., 107 F. 2d 90.

Wilson v. *Alexander*, 5 Cir., 276 Fed. 875.

Holmes v. *Rowe*, 9 Cir., 97 F. 2d 537.

Brown v. *Pacific Mutual Life Ins. Co.*, 4 Cir., 62 F. 2d 711.

Ruhlin v. *New York Life Ins. Co.*, 3 Cir., 93 F. 2d 416.

St. Louis, I., M. & S. Ry. Co. v. *Bellamy*, 211 Fed. 172 (E. D. Ark.).

Sterling v. *Gredig*, 5 F. Supp. 329 (S. D. Tex).

American Surety Co. v. *Baldwin*, 2 F. Supp. 679 (S. D. Idaho).

The foregoing cases make it clear that the Eighth Circuit correctly applied established principles of equity arriving in at the result in this case. If Toucey, by the use of Shay, were permitted to relitigate in the Missouri state court the question already decided by the District Court for the Western District of Missouri, namely, whether or not Toucey was totally and permanently disabled, not only would respondent be required to defend itself anew in another and different court upon an issue already decided but, since it is conceivable, at least, that that court might reach a different result, respondent would be in the absurd position of being at the mercy of a State court judgment directly in conflict with a decree of a Federal court of equity and being compelled to perform that judgment in spite of the prior decree. Such a situation, we respectfully submit, violates every sentiment of justice and fairness just as it clearly violates the established principles of equity applicable to such situations.

Any result other than the one achieved by the Eighth Circuit would render futile the decrees of the District Courts, would lead to an unseemly conflict be-

tween federal and state jurisdictions, would render it impossible for parties to know when their rights and interests were finally adjudged and concluded, and would subject them to repeated legal assaults by disappointed litigants which they would be powerless to prevent.

In passing, it might be noted that the decisions of this Court upon this subject have been not only harmonious but unanimous. In not a single case in this Court which we have been able to find has a single Justice ever dissented in any opinion announcing and applying the principle applied by the Circuit Court of Appeals in this case.

II.

Section 265, Judicial Code (Sec. 379, Title 28, U. S. C.; R. S., Sec. 720), Does Not, under the Circumstances of the Present Case, Prevent a Federal Court from Staying Proceedings in an Action IN PERSONAM Pending in a State Court, Where the Purpose and Effect of the State Court Proceeding Is to Relitigate and Have Readjudicated Issues Finally Adjudicated by a Prior Federal Court Decree.

Title 265, Judicial Code, provides:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This section must be construed in the light of Section 262, Judicial Code (Sec. 377, Title 28, U. S. C; R. S., Sec. 716), which authorizes the federal courts, including the District Courts, to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law.

Sec. 265 was first enacted March 2, 1793 (I Stat. 334, Sec. 5), and contained several unrelated provisions af-

fecting the judiciary. After restricting the use of the writ *ne exeat*, the section provided: "Nor shall a writ of injunction be granted to stay proceedings in any Court of a State." The Annals of Congress shed no light upon its meaning or the intent of Congress in passing it (Annals 3d Congress, Col. 143 (1793)). Mr. Charles Warren, in an article entitled "Federal and State Court Interference," 43 Harvard L. Rev. 345, 347 (1930), assumes that the provision resulted from the report by Attorney General Edmund Randolph to the House of Representatives of December 27, 1790, suggesting changes in the Judiciary Act of 1789. Randolph recommended that the Act provide that "no injunction in equity shall be granted by a District Court to a judgment at law of a State Court." It will be noted that the wording adopted by Congress is quite different from that recommended by Randolph and Mr. Warren's assumption is of at least doubtful validity.

This Court, however, has often stated the purpose of Sec. 265, and the Congressional policy in enacting it. It is a "safeguard"; it is to prevent "needless friction" and "unseemly conflict" between federal and state courts. *Oklahoma Packing Co.* v. *Oklahoma Gas & Elec. Co.*, 309 U. S. 4 (1940); *Hale* v. *Bimco Trading, Inc.*, 306 U. S. 375 (1939); *Essanay Film Co.* v. *Kane*, 258 U. S. 358 (1922).

In the *Hale case, supra*, Mr. Justice Frankfurter said, l. c. 378:

> That provision is a historical mechanism * * * for achieving harmony in one phase of our complicated federalism by avoiding needless friction between two systems of courts having potential jurisdiction over the same subject matter. *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183. The present record presents no occasion for bringing this safeguard into play.

There are several well-defined classes of cases which this Court has held do not come within the prohibition of the statute and in which the Federal courts have enjoined proceedings in State courts.

Some of these classifications are:

1. A Federal Court will enjoin the institution or prosecution in the State court of proceedings to enforce a local statute which is repugnant to the United States Constitution.

Ex parte Young, 209 U. S. 123 (1908).
Truax v. *Raich*, 239 U. S. 33 (1915).
Missouri v. *Chicago, B. & Q. R. R. Co.*, 241 U. S. 533 (1916).

2. A Federal court will enjoin the institution or prosecution of a State court action, the result of which would be to cast an undue burden upon interstate commerce.

Atchison, etc., Ry. Co. v. *Wells*, 265 U. S. 101 (1924).
Riehle v. *Margolies*, 279 U. S. 218 (1929).
Hill v. *Martin*, 296 U. S. 393 (1935).

3. A Federal court will enjoin the institution or prosecution of a State court action where the latter would interfere with the custody of a *res* previously acquired by the Federal court, or where the Federal court has the prior custody of property, in whatever form, by receivership, equitable foreclosure or other appropriate proceedings.

Covell v. *Heyman*, 111 U. S. 176 (1884).
Julian v. *Central Trust Co.*, 193 U. S. 93 (1904).
Riverdale Cotton Mills v. *Alabama & Georgia Mfg. Co.*, 198 U. S. 188 (1905).
Kline v. *Burke Construction Co.*, 260 U. S. 226 (1922).

4. A Federal court will enjoin the enforcement of a judgment obtained in the State court by fraud, without service of legal process, and without notice.

Arrowsmith v. *Gleason*, 129 U. S. 86 (1889).
Simon v. *Southern Ry. Co.*, 236 U. S. 115 (1915).

5. A Federal court will enjoin further proceedings in a State court in a case which has been removed to the Federal court.

French v. *Hay*, 22 Wall. 250 (1874).

Dietzsch v. *Huidekoper*, 103 U. S. 494 (1880).

Madisonville Traction Co. v. *St. Bernard Mining Co.*, 196 U. S. 239 (1905).

6. A Federal court which has issued a final decree in equity adjudging the rights of parties will, upon the filing of a supplemental bill, enjoin the institution or prosecution in a State court of an action, the object or effect of which is to relitigate and readjudicate issues settled by the decree of the Federal court, or which would otherwise tend to nullify that decree or lessen or impair its effect.

Root v. *Woolworth*, 150 U. S. 401 (1893).

Julian v. *Central Trust Co.*, 193 U. S. 93 (1904).

Riverdale Cotton Mills v. *Alabama & Georgia Mfg. Co.*, 198 U. S. 188 (1905).

Gunter v. *Atlantic Coast Line*, 200 U. S. 273 (1906).

Looney v. *Eastern Tex. R. R. Co.*, 247 U. S. 214 (1918).

Supreme Tribe v. *Cauble*, 255 U. S. 356 (1921).

Independent Coal & Coke Co. v. *United States*, 274 U. S. 640 (1927).

Local Loan Co. v. *Hunt*, 292 U. S. 234 (1934).

Dugas v. *American Surety Co.*, 300 U. S. 414 (1937).

The present case falls perfectly within the sixth classification, as the cases we have cited under Point I (B) of this brief clearly show and as the opinion of the Eighth Circuit Court of Appeals amply demonstrates. All of these classifications have been specifically held by unanimous decisions of this Court to constitute "exceptions" which do not come within the meaning or effect of Section 265.

We will now quote from a number of this Court's opinions, the language of which shows why the cases in the six classes mentioned do not come within the effect of Section 265. We have not attempted to classify all of the decisions of this Court, or to include in the classes enumerated every decision coming within them.

Wells Fargo & Co. v. *Taylor*, 254 U. S. 175 (1920), is a leading case. There Taylor, an employee of the express company, sued the railroad in a Mississippi State court for injuries received by the derailment of an express car and obtained a judgment. The express company attempted to intervene in that suit but was denied the right. It thereupon filed a bill in equity in the Federal court, alleging diversity of citizenship; that it had a contract with the railroad by which it agreed to indemnify the railroad against loss from injury to the express company's employees; that it also had a contract with Taylor, whereby he assumed the risk of his employment; and that neither the express company nor the railroad should under any circumstances be liable for any injury to him. The bill asked that the enforcement of the State court judgment be enjoined. The District Court issued the injunction, but the Circuit Court of Appeals reversed it. On certiorari, this Court held that the injunction was properly issued. Considering the effect of Section 265, Justice Vandeventer said, l. c. 183-4:

> The provision has been in force more than a century and often has been considered by this court. As the decisions show, it is intended to give effect to a familiar rule of comity and like that rule is limited in its field of operation. Within that field it tends to prevent unseemly interference with the orderly disposal of litigation in the state courts and is salutary; but to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and the laws of Congress, which of course is not contemplated. As with many other statutory provisions, this one is designed to be in accord with,

> and not antagonistic to, our dual system of courts. In recognition of this it has come to be settled by repeated decisions and in actual practice that, where the elements of federal and equity jurisdiction are present, the provision does not prevent the federal courts from enjoining the institution in the state courts of proceedings to enforce local statutes which are repugnant to the Constitution of the United States, *Ex parte Young*, 209 U. S. 123; *Truax* v. *Raich*, 239 U. S. 33; *Missouri* v. *Chicago, Burlington & Quincy R. R. Co.*, 241 U. S. 533, 538, 543; or prevent them from maintaining and protecting their own jurisdiction, properly acquired and still subsisting, by enjoining attempts to frustrate, defeat or impair it through proceedings in the state courts, *French* v. *Hay*, 22 Wall. 250; *Julian* v. *Central Trust Co.*, 193 U. S. 93, 112; *Chesapeake & Ohio Ry. Co.* v. *McCabe*, 213 U. S. 207, 219; *Looney* v. *Eastern Texas R. R. Co.*, 247 U. S. 214, 221; or prevent them from depriving a party, by means of an injunction, of the benefit of a judgment obtained in a state court in circumstances where its enforcement will be contrary to recognized principles of equity and the standards of good conscience, *Marshall* v. *Holmes*, 141 U. S. 589; *Ex parte Simon*, 208 U. S. 144; *Simon* v. *Southern Ry. Co.*, 236 U. S. 115; *Public Service Co.* v. *Corboy*, 250 U. S. 153, 160; *National Surety Co.* v. *State Bank of Humboldt*, 120 Fed. Rep. 593.

The portion of the language quoted which applies directly here is that in which the Court says the statute does not "prevent them (the federal courts) from maintaining and protecting their own jurisdiction, properly acquired and still subsisting, by enjoining attempts to frustrate, defeat or impair it through proceedings in the state courts." The classes of cases stated by Justice Vandeventer in which injunctions against state court proceedings are proper have been uniformly recognized and maintained by this Court.

The necessity for exceptions to the literal language of Section 265 is illustrated by one or two earlier cases. In *Dietzsch* v. *Huidekoper*, 103 U. S. 494 (1880), this

Court upheld the issuance of an injunction by a federal court, pursuant to a supplemental bill, against the further prosecution of an action in the state court which had been removed to the federal court. This Court said, l. c. 498:

> If the bill is not maintainable, the appellees would find themselves in precisely the same plight as if the judgment of the United States Circuit Court in the replevin suit had been against them, instead of for them. The judgment in their favor would settle nothing. Instead of terminating the strife between them and their adversaries, it would leave them under the necessity of engaging in a new conflict elsewhere. This would be contrary to the plainest principles of reason and justice.

The decision was founded on *French, Trustee*, v. *Hay*, 22 Wall. 250, *supra*.

In *Arrowsmith* v. *Gleason*, 129 U. S. 86 (1889), plaintiff filed a bill in equity in the federal court attacking an order of sale by the Ohio Probate Court authorizing the sale of certain lands, on the ground that the sale was fraudulent and wrongfully approved by the Probate Court, and asking that the decree set the sale aside. The lower court dismissed the bill upon demurrer upon the argument that the plaintiff had an adequate remedy at law by ejectment. This Court held that the bill stated a cause of action and was improperly dismissed. It quoted with approval (l. c. 99) from *Payne* v. *Hook*, 7 Wall. 425, where, on page 430, the court said:

> The equity jurisdiction conferred on the Federal courts is the same as that the High Court of Chancery in England possesses; is subject to neither limitation or restraint by state legislation, and is uniform throughout the different States of the Union. The Circuit Court of the United States for the District of Missouri, therefore, had jurisdiction to hear and determine this controversy, notwithstanding the peculiar structure of the Missouri probate system, and was bound to exercise it, if the bill, according to the

> received principles of equity, states a case for equitable relief. The absence of a complete and adequate remedy at law is the only test of equity jurisdiction, and the application of this principle to a particular case must depend on the character of the case as disclosed in the pleadings.

In *Julian* v. *Central Trust Co.*, 193 U. S. 93 (1904), cited in Point I (B) of this brief, the Court said, l. c. 112:

> In such cases where the Federal court acts in aid of its own jurisdiction and to render its decree effectual, it may, notwithstanding Sec. 720, Rev. Stat., restrain all proceedings in a state court which would have the effect of defeating or impairing its jurisdiction.

cit[illegible] *French* v. *Hay*, *supra*, and *Dietzsch* v. *Huidekoper*, *supra*.

In *Looney* v. *Eastern Tex. R. R. Co.* 247 U. S. 214 (1918), cited under Point I (B) of this brief, the Court said, l. c. 221:

> So important is it that unseemly conflict of authority between State and Federal courts should be avoided by maintaining the jurisdiction of each free from the encroachments of the other, that Sec. 265 of the Judicial Code * * * has repeatedly been held not applicable to such an injunction.

These cases emphasizes the principle that the "exceptions" which this Court has recognized from the operation of the Statute are for the purpose of avoiding conflict rather than of creating it.

In *Gunter* v. *Atlantic Coast Line*, 200 U. S. 273 (1906), cited under Point I (B) of this brief, the Court said, l. c. 292:

> Indeed, the proposition that * * * section 720 of the Revised Statutes, control a court of the United States in administering relief, although the court was acting in a matter ancillary to a decree rendered in

a cause over which it had jurisdiction, is not open for discussion. *Dietzsch* v. *Huidekoper*, 103 U. S. 494; *Prout* v. *Starr*, 188 U. S. 537; *Julian* v. *Central Trust Co.*, 193 U. S. 93, 112.

One of the most illuminating cases in this Court is *Local Loan Co.* v. *Hunt*, 292 U. S. 234 (1934), cited under Point I (B) of this brief. Justice Sutherland said, l. c. 239:

> The proceeding being ancillary and dependent, * * * may be maintained * * * notwithstanding the provisions of Section 265 of the Judicial Code * * *.

In *Dugas* v. *American Surety Co.*, 300 U. S. 414 (1937), cited under Point I (B) of this brief, the Court said, l. c. 428:

> The power of the court to enjoin Dugas from further prosecuting his suit in the state court on the appeal bond has full support * * * in settled adjudications respecting the power of a federal court to protect its jurisdiction and decrees.

The existence of these well defined exceptions to the operation of the statute was particularly noted by Justice Brandeis in *Riehle* v. *Margolies*, 279 U. S. 218, 223, *supra*, and *Hill* v. *Martin*, 296 U. S. 393, *supra*. In *Riehle* v. *Margolies* the Court held that the appointment of a receiver on a creditor's bill did not give the federal court the right to stay a suit previously begun against the debtor in the state court, this he said not being one of the exceptions to the statute (although it is clear that a state court action subsequent to the appointment of a receiver would have been stayed to protect the federal court's prior jurisdiction).

In *Hill* v. *Martin*, Justice Brandeis, in holding that an injunction against the collection of a New Jersey inheritance tax was properly refused, said, l. c. 403:

> Thus, the prohibition applies whatever the nature of the proceeding, unless the case presents facts

which bring it within one of the recognized exceptions to Sec. 265. It is not suggested there is a basis here for any such exception.

This Court has as recently as January 15, 1940, considered Section 265 and held the case there presented to be within the statute. *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 309 U. S. 4. There the Electric Company appealed to the Oklahoma Supreme Court from an order of the Oklahoma Corporation Commission reducing its utility rates. To protect a consumer, Wilson & Co., the Electric Company gave a supersedeas bond. It lost the appeal and Wilson sued on the bond in the Oklahoma state court. To enjoin prosecution of this suit, the Electric Company invoked the jurisdiction of the Federal District Court in Oklahoma, which enjoined the state court action. This Court reversed, Mr. Justice Frankfurter saying (l. c. 8):

> The decree below is thus within the plain interdiction of an Act of Congress, and not taken out of it by any of the exceptions which this Court has heretofore engrafted upon a limitation of the power of the federal courts dating almost from the beginning of our history and expressing an important Congressional policy—to prevent needless friction between state and federal courts. * * *.
>
> Neither record nor findings below give any other basis for injunctive relief save the threatened injury implied in the state court lawsuit; and that could not be enjoined.

Thus the very latest expression of this Court has recognized with approval the exceptions to the literal application of the statute, all recognized and enforced to fulfill the purpose of the Act—to prevent friction between the two jurisdictions. In all those classes of cases denominated exceptions by this Court, the issuance of the injunction has been necessary to preserve an orderly and harmonious maintenance of the respective functions of the federal and state courts, whereas its denial would have

had the very effect the statute was designed to avoid. Thus the construction and application of Section 265 depends upon the purpose and effect of the particular injunction. Where, as here, it prevents friction and preserves the integrity of a prior decree of the federal court, its issuance should be upheld.

Section 265 has *never* been construed to prohibit the issuance of an injunction to protect the integrity of a prior federal court decree and to prevent a subsequent attempt to relitigate in a state court issues already adjudged by that decree. On the contrary, this Court has repeatedly given its sanction to the issuance of such injunctions and the lower federal courts, following and applying the principles enunciated by this Court, have done likewise. See cases cited under Point I of our brief, pages 15-16.

There is nothing in the language of the statute to distinguish the particular class to which this case belongs from the other classes of exceptions. If it were held that injunctions could not issue in supplemental proceedings to protect the integrity of prior decrees in equity of the federal courts, it would follow that these courts would also be powerless to enjoin the enforcement of void local statutes, to enjoin proceedings which cast an undue burden on interstate commerce, and to enjoin state court proceedings which would interfere with the federal court's possession of a *res* or of property held in receivership or under equitable foreclosure. The federal courts could no longer protect actions which had been validly removed to them from the state courts. On the contrary, the State tribunals could proceed with such cases, thus, in effect, nullifying the removal statute, since there is no act of Congress which expressly authorizes injunctions where cases have been removed. Hence, the effect, if the salutary exception to the rule exemplified in the present case were abrogated, is incalculable, and would not only cripple the normal function of the federal courts, destroy a great body of law which the unanimous deci-

sions of this Court have built up over a period of many years, but would lead to that very conflict between the federal and state courts which the statute under consideration seems to have been designed to eliminate. The exceptions to the statute which we have mentioned, as this Court has said, are designed not to frustrate the statute but to carry out the purpose for which it was enacted.

PETITIONER'S CASES.

Petitioner relies upon *Kline* v. *Burke Const. Co.*, 260 U. S. 226 (1922), and similar cases from the Eighth Circuit. That decision is unquestionably correct upon the particular facts, but it has no application here. There the action pending in the federal court was an action at *law* and sought a money judgment only. The Construction Company sued Kline in the federal court for damages for breach of contract. Subsequently, Kline sued the Construction Company in equity in the state court for an accounting and damages. The two cases presented substantially the same issues. Thereupon the Construction Company filed a bill as a dependent bill to its law action to enjoin Kline from further prosecuting his state court equity case, although nothing had been decided in the federal court action. This Court simply decided that a federal court has no power in an action at law to enjoin proceedings *in personam* concurrently pending in the state court, where the effect of the state court proceeding would not be to defeat or impair the jurisdiction of the federal court.

Thus, there are important distinctions between the Kline case and this case. Since the federal court action was at law, its *equitable* powers could not have been invoked. The federal and state court cases were entirely separate and distinct. Since the federal court action had not proceeded to judgment, there was nothing which that court could or should protect in the way of a final decree. The state court case did not represent an at-

tempt to relitigate or have readjudicated any issues previously decided by the federal court, because that court had decided nothing.

The decision in the Kline case was written by Mr. Justice Sutherland, who twelve years later wrote the opinion in *Local Loan Co.* v. *Hunt*, 292 U. S. 234. He made no reference in the Hunt case to the Kline case and in spite of the fact that he must have been fully familiar with it, he reaffirmed and reapplied the principle for which we are contending here, namely, that Sec. 265 does not prohibit the issuance of an injunction against state court proceedings, the effect of which is to relitigate and have readjudicated issues already adjudged by a prior federal equity decree. Judge Woodrough said in the first Toucey appeal (102 F. 2d 16, l. c. 23):

> The court made no reference in the case just quoted from (the Hunt case) to its earlier opinion in *Kline* v. *Burke Construction Co., supra*, because in the earlier case the court had confined its consideration to the co-pending suits "for a money judgment only," in neither of which adjudication had been arrived at and where no question of "effectuating adjudication" was involved.

Petitioner suggests that the doctrine of the Kline case limits the power of a federal court to enjoin proceedings in a state court to cases in which the federal court has custody of a *res*, the protection of which by injunction is necessary to proper control and administration by the federal court. Such a suggestion mistakes the nature of federal equitable jurisdiction in a case such as this. The power to issue an injunction does not depend upon the custody of a specific *res*. An equity court has the inherent power to protect and preserve the integrity of its own decree. Nothing in the declaration of this principle in *Root* v. *Woolworth*, *supra*, and other cases, limits its application to proceedings *in rem*. The principle has an entirely different origin and has no reference to whether there is or is not a *res* in the custody of the

federal court. Judge Parker in *Brown* v. *Pacific Mutual Life Ins. Co.*, 4 Cir., 62 F. 2d 711, has made this clear, l. c. 713:

> * * * we find nothing in it (*Kline* v. *Burke Const. Co.*) which limits to actions *in rem* the right of a federal court of equity to protect its jurisdiction. It involved no situation where it was necessary for a court of equity to protect against encroachment on its jurisdiction or the lawful effect of its orders and decrees, but merely one where independent proceedings were pending in the state and federal courts, in both of which the ultimate relief sought was a money judgment (insert ours).

The District Court below recognized and gave effect to these considerations. See Petitioner's application for certiorari, page 63.

III.

To Construe Section 265 to Prohibit the Injunction Issued in This Case Would Create Grave Doubts Respecting Its Constitutionality under Section 2 of Article III of the United States Constitution. Section 265 Should Be So Construed As to Avoid These Doubts, in Harmony with the Uniform and Unanimous Decisions of This Court.

Section 1 of Article III of the Constitution says that "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Section 2 reads as follows:

> "Section 2. *Extent of judicial power.* The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States;

> between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects."

Article I, relating to the legislative power, says in Section 1:

> "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Section 8, which specifically enumerates the powers of Congress, says, "The Congress shall have power * * * to constitute tribunals inferior to the Supreme Court" and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

It seems clear from these sections that, while the Constitution leaves it to Congress to constitute the inferior tribunals in which that portion of the "judicial power" not vested by the Constitution in the Supreme Court shall repose, it does not confer any discretion upon Congress whether that judicial power "shall extend to all cases in law and equity" but specifically commands that such judicial power shall extend to all such cases.

This Court has expressly held that the right to issue injunctions which inheres in a court of equity is a question of power, not a mere question of jurisdiction.

> *Treinies* v. *Sunshine Mining Co.*, 308 U. S. 66 (1939).
>
> *Hill* v. *Martin*, 296 U. S. 393 (1935).
>
> *Smith* v. *Apple*, 264 U. S. 274 (1924).

It is entirely conceivable that Congress might properly deprive the District Courts of the United States of those powers equitable in nature which they have here-

tofore exercised, including the power to issue injunctions provided for by Section 277, Judicial Code (Sec. 263, Title 28, U. S. C.), provided Congress at the same time, constituted other inferior courts having those equity powers, as the Constitution requires. It is not conceivable, however, that without creating other courts invested with those powers, Congress could, in the face of the Constitutional mandate, entirely deprive a Federal District Court of its powers as a court of equity.

The question then arises—Can Congress divest the court of equity of *any* of its essential equitable powers without thereby violating the requirements of Section 2 of Article III, one of which is the inherent power to effectuate its own decrees and protect their integrity against attempts to render them nugatory. This power, as we mentioned earlier in this brief, is of ancient origin and inhered in courts of equity long before the Federal Constitution was adopted.

In *Irvine* v. *Marshall*, 20 Howard 558 (1857), the question was whether or not the federal district court as an equity court could, in the absence of express statutory provisions, recognize and enforce a resulting trust arising upon the defendant's purchase of land with plaintiff's money. The Court held that by Section 2 of Article III and the statute organizing the inferior judiciary of the United States, the federal courts possessed all those incidents of equity jurisdiction established in English jurisprudence and, therefore, such a court could enforce plaintiff's equity. The Court said, l. c. 564:

> * * * the jurisdiction of the courts of the United States is properly commensurate with every right and duty created, declared, or necessarily implied, by and under the Constitution and laws of the United States. Those courts are created courts of common law and equity; and under whichsoever of these classes of jurisprudence such rights or duties may fall, or be appropriately ranged, they are to be taken cognizance of and adjudicated according to the settled

and known principles of that division to which they belong.

By the language of the Constitution it is expressly declared (art. 3d, sec. 2, clause 1), that the judicial power of the United States shall extend to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made under their authority. By the statute which organized the judiciary of the United States, it is provided, that the Circuit Courts shall have jurisdiction of suits of a civil nature "at common law or in equity" (*Vide* 1 Stat. at L., p. 78, section 11). In the interpretation of these clauses of the Constitution and the statute, this court has repeatedly ruled, that by cases at common law are to be understood suits in which legal rights are to be ascertained and determined, in contradistinction to those where equitable rights alone are recognized, and equitable remedies are administered *Vide Parsons* v. *Bedford*, 3 Pet. 447, and *Robinson* v. *Campbell*, 3 Wheaton 212). That by cases in equity are to be understood suits in which relief is sought according to the principles and practice of the equity jurisdiction, as established in English jurisprudence (*Vide* the case of *Robinson* v. *Campbell*, just cited, and the *United States* v. *Howland*, 4 Wheaton 108).

Michaelson v. *United States*, 266 U. S. 42 (1924), involved the constitutionality under Sec. 2, Art. III, of that provision of the Clayton Act giving the right of trial by jury in contempt proceedings to those found violating decrees of injunction in labor controversies. It was argued that the power of a court to vindicate or enforce its decree in equity is inherent and is derived from the Constitution as a part of its judicial power, and that Congress is without Constitutional authority to deprive the parties in an equity court of the right of trial by the Chancellor. The Circuit Court of Appeals for the 7th Circuit had upheld this argument (291 Fed. 940). This Court said, l. c. 64:

"If the statute now under review encroaches upon the equity jurisdiction intended by the Constitu-

> tion, a grave constitutional question in respect of its validity would be presented; and it, therefore, becomes our duty, as this court has frequently said, to construe it 'if fairly possible so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' *Panama R. R. Co. v. Johnson*, 264 U. S. 375."

Justice Southerland then construed the statute to mean that the contempt proceedings provided in the Act applied to criminal and not civil contempt and, therefore, the accused had a constitutional right to trial by jury. However, he recognized the constitutional principle that Congress can not by legislation impair or restrict a power of a court inherent in its nature. He said, l. c. 65:

> But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power. So far as the inferior federal courts are concerned, however, it is not beyond the authority of Congress (*Ex parte Robinson*, 19 Wall. 505, 510-511; *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 326); *but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative.* That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character (Italics ours).
>
> See, also, *Crowell* v. *Benson*, 285 U. S. 22 (1932).

It may well be that Congress can limit the power of injunction by eliminating a particular type of controversy from its effect, as this Court has held with respect to the Norris-LaGuardia Act restricting the right of injunction in labor disputes. *Lauf* v. *E. G. Shinner & Co.*, 303

U. S. 323. But the present situation is of a different kind. Sec. 265 literally construed does not limit the use of the injunction to a particular class of controveries but purports to abolish its use in *every* class of controversies where to use it will effect a stay of proceedings in a state court. If a court of equity is deprived of the power to carry out and effectuate its own decrees it in effect ceases to be a court of equity. If, for example, after a federal court of equity has ordered one in possession to surrender land which he is withholding from a successful claimant, he can maintain in a state court a suit to quiet his title against the successful claimant, the federal court might just as well not have rendered any decree at all, because it could not be carried out. A decree which cannot be effectuated or enforced is no decree at all. It cannot have been contemplated by the framers of the Constitution, in view of the categorical language used in Article III, that Congress should create an inferior court having the form of a court of equity but none of its substance.

This Court has often stated that the cardinal principle of statutory construction is to save and not to destroy, and thus has held that as between two possible interpretations of a statute, by one of which it would be constitutional and by the other void, its plain duty is to adopt that which will save the Act. Even to avoid a serious doubt, the rule is the same. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337; *Crowell* v. *Benson*, 285 U. S. 22.

That Section 265 can readily be, consistent with its object, so construed as to effectuate its purpose without creating a doubt respecting its constitutionality is obvious from the many cases already cited, in which exceptions to its effect have been recognized. That such an interpretation as this Court and inferior courts have heretofore given the statute ought to be respected is clear from the recent pronouncements of this Court upon the subject of statutory construction.

In *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, Mr. Justice Reed said, l. c. 542:

> In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. * * *
>
> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. *When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words.* When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear the words may appear on "superficial examination" (Italics ours).

It is very evident from the uniformity and unanimity with which this Court in the past has observed certain well defined exceptions to the terms of Section 265 that this Court has given the Section far more than a mere "superficial examination."

In *Wisconsin* v. *J. C. Penney Co.*, 61 S. Ct. 246, Mr. Justice Frankfurter quoted with approval the following language from *Henderson* v. *Mayor of New York* (92 U. S. 259), l. c. 249:

> In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect.

It is therefore earnestly submitted that to avoid grave doubts respecting the constitutionality of section 265, the settled interpretation heretofore uniformly given it by this court should not be disturbed. Particularly is this true here where petitioner has not briefed nor discussed this very important subject. This Court should not overthrow the accepted construction of Section 265 and principles of equity settled for many years without cogent and compelling reasons being advanced by him who urges such action.

Conclusion.

From the foregoing, we trust that we have made it clear to the Court that the Eighth Circuit Court of Appeals, in reaching the result it did in this case, faithfully followed a well defined rule of law established by the uniform precedents set by this Court cited in our brief. It must also be clear that the Circuit Court of Appeals properly applied that rule of law to the facts in this case. The existing interpretation as applied to the present controversy is so plain and has been so uniform and so unanimous, and the consequences of a change would be so far reaching and so disastrous in creating the very conflict of jurisdiction which the statute has been held designed to avoid, that we trust this Court will see its way clear to follow its previous interpretation of the Statute and affirm the decree of the Circuit Court of Appeals.

On March 3rd, after this brief was sent to the printer, but before it was finally printed, we were served with a typewritten "Brief in Argument before Supreme Court of the United States." This "brief" is simply a reiteration of all that irrelevant matter in petitioner's "Petition for Writ of Certiorari" relating to the various acts of misconduct charged by petitioner to have been committed by respondent's employees in the trial of the original case. Besides violating Rule 27 of the Revised Rules of this

court (February 27, 1939), the brief obviously is of no assistance to this court in deciding the questions on which, we think, certiorari was granted.

Respectfully submitted,

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